In the

Supreme Court of the United States

October Term, 1941.

No. ....

STANDARD OIL COMPANY OF LOUISIANA,
Appellant,

vs.

STATE OF TENNESSEE, ex rel. GEORGE F. McCANLESS, Commissioner of Finance & Taxation, and ROY H. BEELER, Attorney General of Tennessee,
Appellee.

BRIEF OF APPELLANT, UNDER RULE 7, PARAGRAPH 3, OPPOSING APPELLEE'S MOTION TO DISMISS THE APPEAL.

The motion of appellee to dismiss the appeal for want of a substantial Federal question and statement in support thereof are confined to a part only of one of the three separate Federal questions involved in this appeal. Appellee ignores parts (b) and (c) of the first Federal question and the entire second and third Federal questions which are raised in the appellant's "Statement as to Jurisdiction" in connection with this appeal. We construe this as an attempt to divert the Court's attention from those important

Federal questions which the appellee has ignored and as a tacit admission that our contentions on those issues are not easily answered.

As to that part of the Federal questions involved which is designated as (1) (a) in the appellant's "Statement as to Jurisdiction," appellee contends that this particular question "has been so explicitly decided by this Court as to foreclose argument on the subject," citing *General Oil Company* v. *Crain*, 209 U. S., 211. Appellee erroneously concludes that the *Crain* case was one "dealing precisely with the same Tennessee inspection fee statute under consideration here and dealing with a substantially similar method of storage and shipment of petroleum products from Memphis, Tennessee."

(1) The Statute Involved Here Is Radically Different from That Involved in the Crain Case.

The Tennessee inspection fee statute involved in the *Crain* case was Chapter 349, Acts of 1899, which was confined to illuminating oils or burning fluids "which may be manufactured or offered for sale in the State." In other words, the *Crain* case involved storage *and* sale of oils within the State of Tennessee.

The petroleum products involved here were not manufactured, offered for sale or sold in the State of Tennessee, but were merely stored in the State of Tennessee temporarily, during transportation to other states. It was not until 1929, more than twenty (20) years after the decision of the *Crain* case, that the Tennessee inspection fee laws were amended to cover petroleum products "sold or offered for sale or used and/or stored in" Tennessee. (Chapter 12, Public Acts of 1929.)

(2) The Methods of Storage and Shipment in This Case and in the Crain Case Are Substantially Dissimilar.

In the *Crain* case, it was held that the taxpayer, in halting the oil in Memphis, storing, and subsequently selling it there, had "a purpose outside the mere transportation of the oil." The purpose was packaging the imported oil in small containers before it was available for sale or further shipment. This breaking of bulk and packaging, which were regarded as important local incidents at the time when the *Crain* case was decided, are not involved here.

In the *Crain* case, the separate tanks were adopted as a device for evading the inspection of oils going to other states, as well as the payment of inspection fees, while in the case at bar the petroleum products have been kept in separate export tanks at the invitation of the State and in obedience to statutory laws and regulations promulgated by the administrative officers of the State of Tennessee.

In the case at bar, the petroleum products were delayed in Tennessee for the sole purpose of transferring them in bulk and with speed from river barges into railroad tank cars. The delay is "no longer than is necessary for the convenience of transshipment."* The phrase "no longer than is necessary for the convenience of transshipment" must be given a practical construction, and in the case at bar the proof showed that transshipment, looking at each barge shipment as a whole, could have been expedited only at additional cost and expense, both to appellant and to the railroad company (R., pp. 126-127). Appellee's repeated statement that the stop in Tennessee "was for the business pur-

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*Quoted from *State* v. *Engle, Receiver* (1871), 5 Vroom (N. J.), 34 N. J., 425, by Mr. Justice McKenna in *General Oil Co.* v. *Crain*, *supra*, at p. 230.

poses and profit of the owner" is mere argument and not a statement of fact. Besides, it proves nothing. Transportation itself, including all delays incident thereto, is necessarily for the benefit of the owner of the transported products.

(3) The Crain Case Is Doubtful Authority.

In *Carson Petroleum Company* v. *Vial*, 279 U. S., 95, the State of Louisiana contended that "it is impossible to distinguish the case from that of *General Oil Company* v. *Crain, supra*" (279 U. S. at p. 98). Instead of attempting to distinguish the *Crain* case, Mr. Chief Justice Taft questioned its authority and refused to follow it when he wrote the majority opinion in the *Carson Petroleum Company* case. (279 U. S., at pp. 105-106.) He pointed out that since the decision of the *Crain* case, "there has been a liberal construction of what is continuity of the journey." And since the decision of the *Carson* case, this construction has become still more liberal. The technical and legalistic concepts which prevailed at the time when the *Crain* case was decided have given way to more practical and flexible criteria, such as the intention of the owner and the economic burden or effect of state taxes and regulations on interstate commerce. See *McGoldrick* v. *Berwind-White Coal Mining Company*, 309 U. S., 33.

Appellee cites a number of cases in which it is claimed that the *Crain* case was "cited approvingly and followed repeatedly." But in those cases the *Crain* case was cited merely as an illustration of the general proposition that when property comes to rest within a state, it becomes subject to non-discriminatory taxation by that state.

That the authority and applicability of the *Crain* case in the case at bar is extremely doubtful is sufficiently evidenced

by the doubts of the judges of the Supreme Court of the State of Tennessee, who divided sharply on this question.

Respectfully submitted,

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